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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION
17

18 CALIFORNIA RESTAURANT
ASSOCIATION,

19 Plaintiff,

20 v.

21 THE COUNTY OF SANTA CLARA and
22 THE SANTA CLARA COUNTY PUBLIC
HEALTH DEPARTMENT,

23 Defendants.
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No. CV-08-03685 CW
(Related to No. CV-08-03247 CW)

**DECLARATION OF SCOTT
RANDOLPH IN SUPPORT OF
PLAINTIFF'S MOTION FOR
DECLARATORY RELIEF AND A
PRELIMINARY INJUNCTION**

Hearing Date: August 28, 2008
Hearing Time: 2:00 p.m.
Courtroom: Courtroom 2, 4th Floor

The Honorable Claudia Wilken

Complaint filed: July 22, 2008
Notice of Removal filed: August 1, 2008

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Jul 24, 2008 3:07 PM

David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
Case #1-08-CV-117885 Filing #G-9873
By M. Rosales, Deputy

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CALIFORNIA RESTAURANT ASSOCIATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

CALIFORNIA RESTAURANT
ASSOCIATION,

Plaintiff,

v.

THE COUNTY OF SANTA CLARA and
THE SANTA CLARA COUNTY PUBLIC
HEALTH DEPARTMENT,

Defendants.

Case No. 1-08-CV-117885

**DECLARATION OF SCOTT
RANDOLPH IN SUPPORT OF
PLAINTIFF'S MOTION FOR
DECLARATORY RELIEF AND A
PRELIMINARY INJUNCTION**

Date: August 15, 2008
Time: 9:00 a.m.
Dept: 8

Action filed: July 22, 2008

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1 I, SCOTT RANDOLPH, declare:

2 1. I provide this declaration in support of Plaintiff's Motion for Declaratory Relief and
3 a Preliminary Injunction. If called as a witness, I could and would competently testify to the
4 matters set out in this declaration.

5 2. I am the Senior Director of Culinary for T.G.I. Friday's. I am responsible for the
6 hands-on leadership of T.G.I. Friday's culinary team in the development and implementation of
7 innovative food ideas and concepts to increase company sales, efficiency, market share, and
8 profitability, while continuously improving processes and methodology. I have been a chef since
9 1989 and with T.G.I. Friday's for two years. Prior to T.G.I. Friday's, I worked in the culinary
10 departments for Walt Disney World, LSG Sky Chefs, and Sheraton Hotels.

11 3. T.G.I. Friday's was one of the first casual dining chains to be established in the
12 United States. It opened its first restaurant in New York City in 1965. It offers a wide selection of
13 food and alcoholic and non-alcoholic beverages. In 2003, T.G.I. Friday's was the first national
14 casual dining chain to partner with Atkins Nutritional Approach to offer low carbohydrate menu
15 items. In 2007, T.G.I. Friday's introduced a Right Portion, Right Price menu, which contains 10
16 entrees that are about 30 per cent smaller in portion than regular entrees and priced about one third
17 less than regular entrees. The menu is designed to assist our customers in meeting their personal
18 health goals.

19 4. T.G.I. Friday's strongly disagrees with Santa Clara County's Ordinance NS-300.793
20 (the "Ordinance") which would require it to list certain nutritional information, namely calories,
21 saturated fat, trans fat, carbohydrates, and sodium, for its food and beverage items on its menus.
22 There is a wide variability among chefs and other kitchen employees, ingredients, raw food
23 materials, and consistency of preparation in casual dining restaurants such as T.G.I. Friday's. This
24 wide variability in turn creates variability in the nutritional levels for seemingly identical menu
25 items. Our experience has shown that given the variability in our portions, ingredients, and food
26 preparation, it is very difficult for us to consistently be accurate in making statements about the
27 nutritional content of our menu items.
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1 5. Most of the food ingredients that T.G.I. Friday's uses to prepare its meals are not
2 purchased pre-cut, prepackaged or pre-measured. For example, we do not serve processed meats or
3 chicken which tend to be prepackaged and of uniform size and quantity. Rather, we serve chicken
4 wings and sides of ribs, and these items can vary individually in size and fat content because farm
5 animals vary in size and body content.

6 6. The majority of our food offerings are cut, measured and prepared by hand by
7 individual cooks in our restaurants. Since such menu items are prepared by hand from scratch,
8 portion sizes for appetizers, entrees, side dishes, and even sauces, can vary widely from plate to
9 plate depending on which cook is preparing the food, his particular cooking practices, and how busy
10 he is. Some cooks use formal measuring devices to measure ingredients; others add ingredients by
11 hand (a pinch or a fistful), and others eyeball amounts. Many cooks use a combination of these
12 methods, and their practices may vary depending on the day and how busy they are. A cook on a
13 busy Friday night may use different food preparation and service methods than he uses when
14 working a quiet midweek day lunch. A cook on a busy night is more likely to eyeball servings of
15 sauce on rice, whereas a cook who has more time will use a measuring spoon. Similarly, a busy
16 cook may put a handful of French fries on a customer's plate, while a less busy cook may use a
17 standardized measurement to serve the fries.

18 7. Because food items are prepared from scratch using raw ingredients, and each plate
19 is prepared to order by one or more individual employees in the kitchen, it is very difficult for
20 T.G.I. Friday's to assure complete consistency in portions and nutrition levels of ingredients.
21 Therefore, accuracy in the nutritional information of menu items is not always achievable despite
22 T.G.I. Friday's best efforts to do so. This variability in the nutrition levels of menu items creates a
23 difficult situation for restaurants such as T.G.I. Friday's. If they try to comply with the Ordinance
24 they risk being sued or receiving unfair and unfavorable publicity if someone determines that the
25 stated nutrition levels of their food items are not accurate.

26 8. This is not a hypothetical problem. A few years ago an employee at T.G.I. Friday's
27 who was preparing containers of an Atkins program food item "to go," added more sauce to the
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1 food item than the T.G.I. Friday's recipe specified. A local television station had the item analyzed
2 and found that the carbohydrate level represented by T.G.I. Friday's was not accurate. In that
3 instance an individual employee's well-meaning desire to give his customers some additional sauce
4 in the "to go" container caused the representation on the menu to be inaccurate. We are very
5 concerned that such an incident may occur if T.G.I. Friday's is forced to follow the Ordinance.

6 9. Unlike the proposed federal law that T.G.I. Friday's has supported, the Santa Clara
7 County Ordinance does not provide a safe harbor for restaurants whereby, as long as the restaurant
8 provides a standardized recipe with sufficient detail on the correct preparation and employees are
9 trained in following those specifications, a restaurant will not be subject to legal liability in the
10 event there is variability in the listed nutritional levels of its menu items. Even though our chefs
11 follow specifications on how to prepare dishes, and they and other employees receive training on
12 how to prepare and present our menu items, there is inevitably a level of variability in the portions,
13 preparation and presentation of the food, just as there would be in a single unit restaurant or in one's
14 own home kitchen. This variability in turn creates variability in the nutritional levels of seemingly
15 identical food items.

16 10. The Ordinance fails to recognize this fact. It provides that restaurants will be in
17 violation of the Ordinance if they deviate from the average content of a representative sample of a
18 menu item by more than 20%. In order to remove any potential for inconsistency or variability,
19 T.G.I. Friday's would have to add so many checks and balances that costs to the consumer out
20 would increase significantly.

21 11. Additionally, the provision in the Ordinance allowing the calorie level to be
22 expressed as a "range" is impractical and harmful to our business. If T.G.I. Friday's lists a
23 hamburger on its menu with a range of 250-400 calories, some customers will expect that they
24 should be able to order a hamburger that is at a fixed number within that range and will be annoyed
25 when told that the restaurant cannot tell them the precise number of calories of the menu item
26 because of variations in preparation methods and raw ingredients. The restaurant industry is a
27 highly competitive one, and achieving and maintaining customer satisfaction is paramount. It is
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1 very unfair to force a restaurant chain to place information on its menus that will annoy and
2 frustrate customers and raise questions that cannot be answered satisfactorily.

3 12. The provision in the Ordinance allowing for "disclaimers" is also impractical from a
4 business perspective. In today's litigious world, customers are accustomed to seeing disclaimers. A
5 disclaimer, like "Skate at your own risk," does nothing to remove the annoyance of the customer
6 nor does it provide a proper safe harbor from litigation.

7 I declare under penalty of perjury of the laws of the State of California and the United States
8 that the foregoing is true and correct.

9 Executed on July 16, 2008 at Cannollton, TX

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12 SCOTT RANDOLPH
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